

REPORT  
OF THE  
FINANCE COMMITTEE

OF THE  
Baltimore and Ohio Railroad Company,

*In Opposition to the Payment to the State of  
Maryland of the Capitation Tax upon  
Passengers travelling over the  
Washington Branch Road.*

APPROVED AND ADOPTED BY THE BOARD OF DIRECTORS,

DECEMBER 8th, 1869,

*And Ordered to be Printed.*

---

BALTIMORE:  
THE SUN BOOK AND JOB PRINTING ESTABLISHMENT.  
1869.

## CENTRAL CIRCULATION BOOKSTACKS

The person charging this material is responsible for its renewal or its return to the library from which it was borrowed on or before the **Latest Date** stamped below. **You may be charged a minimum fee of \$75.00 for each lost book.**

Theft, mutilation, and underlining of books are reasons for disciplinary action and may result in dismissal from the University.

TO RENEW CALL TELEPHONE CENTER, 333-8400

UNIVERSITY OF ILLINOIS LIBRARY AT URBANA-CHAMPAIGN


OCT 11 1996

OCT 15 1996

When renewing by phone, write new due date below previous due date.

L162

UNIVERSITY OF  
ILLINOIS LIBRARY  
AT URBANA-CHAMPAIGN  
BOOKSTACKS



Digitized by the Internet Archive  
in 2017 with funding from  
University of Illinois Urbana-Champaign Alternates

REPORT  
OF THE  
FINANCE COMMITTEE

OF THE  
Baltimore and Ohio Railroad Company,

*In Opposition to the Payment to the State of  
Maryland of the Capitation Tax upon  
Passengers travelling over the  
Washington Branch Road.*

APPROVED AND ADOPTED BY THE BOARD OF DIRECTORS,

DECEMBER 8th, 1869,

*And Ordered to be Printed.*



BALTIMORE:  
THE SUN BOOK AND JOB PRINTING ESTABLISHMENT.  
1869.

385-1  
B218

385.4  
B21f1

## REPORT OF FINANCE COMMITTEE.

---

The Committee on Finance respectfully submits the following statement :

The Governor of this State has requested the Baltimore and Ohio Railroad Company to pay into the Treasury of the State one-fifth of the whole amount received by the Company for the transportation of passengers on the Washington Branch Road since July 1st, 1868.

The President of this Company has requested the advice and counsel of this Committee as to the course which the Company ought to pursue, and has desired this Committee to present its views to the Board of Directors.

The Committee has fully considered the subject.

The Baltimore and Ohio Railroad Company was incorporated by the Maryland Act of 1826, chapter 123. It was authorized to construct a railroad from the City of Baltimore to the Ohio river, and also to "make lateral railroads in any direction whatsoever, in connection with the said railroad ;" and was empowered, in the construction of such lateral railroads, to exercise all the rights and powers given to the Company to enable it to construct the main line from Baltimore to the Ohio river. [1826, ch. 123, sec. 14.]

In order to enable the Company to procure the necessary means, its whole capital stock was exempted from taxation, and, therefore, all the works and property of the Company, whether upon the main or lateral lines, represented by this stock, became, of course, also exempt from taxation. [1826, ch. 123, sec. 18.]

This Act of the General Assembly of Maryland did not confer any power to build the main line, or lateral roads,



beyond the limits of this State. The State of Maryland could only authorize the construction of these main and lateral lines within the State, although it could provide for the organization of a Company, capable of acquiring the means and receiving the powers necessary to the execution of the work not only within, but also beyond the limits of the State. But it was, of course, understood that the Company, thus brought into being, and enabled to acquire and expend money, would obtain from the proper authorities the right to construct its works within the boundaries of other States, or in the District of Columbia.

The original capital stock of the Company was limited by its charter to \$3,000,000. The State provided [1826, ch. 123, sec. 2,] that \$1,000,000 of this sum should be reserved for subscription by the State, and \$500,000 for subscription by the City of Baltimore. The remaining \$1,500,000 was open to the subscription of individuals, or corporations, and was speedily taken.

When the work was actually commenced, it was soon discovered that the undertaking would prove far more expensive than its projectors had imagined. The State did not exercise the right of subscription, which it had reserved; but by the Act of 1827, ch. 104, agreed to subscribe \$500,000 to the stock of the Company, only upon the condition that those who had already subscribed \$1,500,000 would increase their subscription to \$3,000,000. This condition was complied with. Notwithstanding this increase in the amount of the capital stock, and the subsequent subscription of the City of Baltimore to \$500,000 of the stock, the capital, thus provided, was inadequate to the building of the projected railway.

It was the first great work of that description which had been undertaken. The elements of cost could not be calculated with certainty. It is easy, therefore, to understand why the Company, with a great main line unbuilt, and possessing scanty funds, shrank from applying part of these funds to the construction of a lateral road to Washington, although it possessed ample power under its charter to build it to the line of the District of Columbia.



The pressure, however, was great upon all sides to induce the Company to undertake the work; and the history of the time shows very clearly that the Company was urged to perform the duty upon unreasonable terms. The Act of 1830, ch. 158, reserved to the State the option to take stock in the Baltimore and Ohio Railroad to the amount of the cost of this new branch, or to take and hold as a separate stock, five-eighths of the whole cost of this branch line, and to receive that proportion of its separate earnings, at any time within two years after the branch road was actually completed. It further provided that if the State elected to do either of these two things, within two years, it might pay the price due in money, or in stock of the State, bearing interest at the rate of four and a half per centum per annum. It was provided by this Act that the fare to be paid by each passenger traveling between Baltimore and Washington should not exceed one dollar and fifty cents.

This arrangement, embodied in the Act of 1830, ch. 158, was, as may be supposed, unproductive of results. The capital stock of the Baltimore and Ohio Railroad Company could not have been sold at par; and it was not very probable that any persons would agree to furnish the money necessary to build the road between Baltimore and Washington, when the State had the right to take five-eighths of the investment from them at cost, if it proved to be a profitable enterprise, and was at liberty to pay the amount of such cost in *stock of the State, bearing four and one-half per cent. interest, if it saw proper to do so.*

This Company, therefore, did not attempt to act upon the arrangement provided for by the Act of 1830, ch. 158; nor did it take any further action in the construction of the branch road until the year 1833.

The public anxiety to secure such a railway between Washington and Baltimore had increased, but the difficulty and cost of the construction of the main line occupied all the resources of the Company.

By the Act of March 9th, 1833, [December Session, 1832, ch. 175,] the Legislature, reviewing the provisions of the

Act of 1830, ch. 158, acknowledged that they prevented individuals, or corporations, from embarking their funds in the undertaking. It agreed to make an immediate investment of \$500,000 in the work, provided the whole cost of the road was made a separate fund or stock, [1832, ch. 175, sec. 2,] and to pay for this subscription in cash, or in bonds of the State, bearing four and a half per centum per annum interest, at its option, provided that the Company should have no power to pledge or mortgage the property of the State in the road. It declared that the rate of fare between Baltimore and Washington should not be less than two dollars and fifty cents for each passenger; [1832, ch. 175, sec. 8;] and it provided, also, that the State should be allowed two additional directors in the Baltimore and Ohio Railroad Company. [1832, ch. 175, sec. 10.]

It also required the Company to agree to a stipulation to which we shall presently refer. Before alluding to this stipulation, however, it is proper to note that by the Act of 1833, ch. 33, the State agreed to make its payment in more saleable bonds, bearing an interest of five per centum, provided the Company would enter into a contract, which had the effect of protecting the State against any increased pecuniary responsibility.

The stipulation imposed upon the Company by the Act of 1832, ch. 175, sec. 8, to which we have alluded, was as follows:

*“And be it enacted,* That the Baltimore and Ohio Railroad Company shall pay to the Treasurer of the Western Shore of Maryland, on the first Monday in January and July, in each and every year, for the use of the State, one-fifth of the whole amount which may be received for the transportation of passengers on said railroad by said Company during the six months last preceding; and it shall be the duty of the president or chief officer of the Baltimore and Ohio Railroad Company, to exhibit, on oath or affirmation, to the General Assembly on the first day of January, or as soon thereafter as the said Assembly shall convene, in each and every year, an account, showing the gross amount received by said Company for the transportation of passengers on said road, and the State’s proportion thereof; pro-

vided, that the charge for conveying each person the whole distance between the cities of Baltimore and Washington shall not be reduced below the maximum of *two dollars and a half, hereinbefore established*, unless by the consent of the General Assembly, or in the recess of that body, by the consent of the Governor and Council, which consent shall be effective until the end of the session of the General Assembly next ensuing; and provided also, that in no case shall the amount received by the State from the Baltimore and Ohio Railroad Company for the conveyance of each person the whole distance between the two cities, be less than twenty-five cents; and provided, that at any time and at all times, whenever an application is made to the Legislature by said Company to reduce said maximum price, it shall be lawful for the Legislature to make such regulation of charge as it may deem necessary, not reducing the transportation of passengers to the Company below one dollar and fifty cents for the whole distance, and rateably for any shorter distance." [1832, ch. 175, sec. 8.]

It is, of course, evident that the increase in the rate of fare upon the branch road, from the minimum of one dollar and fifty cents to the minimum of two dollars and fifty cents, was intended to secure a larger revenue to the State, under the operation of the tax embodied in the Act. The tax was imposed by an amendment to the bill, made by the House of Delegates on February 26th, 1833, and the rate of fare was increased by an amendment made by the same body on February 27th, 1833. In both provisions the Legislature consulted its own judgment exclusively.

The Company possessed, under its original charter, the right to build this lateral road to the boundary of the State, and the capital which it might use in building it was free from taxation under an existing law. [1826, ch. 123, sec. 18.] It is difficult, therefore, to understand why the State should have considered itself entitled to exact from the Company the grant of one-fifth of its gross receipts from passengers, because of a subscription of \$500,000 to the special stock created for the construction of the Washington Branch road, except upon the theory that it was doubtful of the success of the enterprise, and desired to be assured against loss upon the debt which it had contracted; for

this debt was redeemable after twenty-five years. [1832, ch. 175, sec. 1.]

The provisions of the ninth section of the same Act would seem to demonstrate that this was its main reason for exacting this agreement. For by that section it is provided that the State Treasurer should invest annually in some safe and productive stock, the premiums upon the stock of the State, sold to pay the \$500,000 subscription to the stock of the Washington Branch—all dividends received from its part of the special stock created for building that Branch road—and the money received from the percentage payable on the fares of the passengers on that road,—and all interest on such several monies, as a sinking fund, dedicated to the payment of the interest and principal of the certificates issued for the \$500,000 already referred to.

It was this fear of ultimate liability for the \$500,000 debt, created for the aid of the Branch road, that induced the State to reserve the unusual power of providing, as it did, by the Act of 1832, already cited, that the charges for transporting passengers on this road between Baltimore and Washington, should not be less than two dollars and fifty cents. For the same reason it exercised, after that time, its right to assent to such reductions of fare as the Company might desire to make. The examples of this are very marked, as the following quotations will show :

*“And be it enacted, That the Board of Directors be and they are hereby authorized to reduce the rate of tolls, from time to time, in their discretion, for passengers upon the Washington Branch of said road, by carrying them to and from the respective cities of Washington and Baltimore, or to and from any point or points on said branch road, on the same day, for a less sum than is now authorized ; provided always, that one-fifth part of all such passage money so received, be accounted for and paid into the State Treasury.”* [1836, ch. 261, sec. 7.]

*“Be it enacted by the General Assembly of Maryland, That from and after the first day of June next, the Baltimore and Ohio Railroad Company be and they are hereby authorized to reduce the rate of tolls for passengers, from time to time in their discretion, upon the*



Washington Branch of the said road, by carrying them to and from the respective cities of Washington and Baltimore, for a less sum than is now authorized; provided, that the charge for a passenger, to and from the said cities, *shall not be less than one dollar and fifty cents*; and provided always, that one-fifth of all such passage money so received, be accounted for and paid into the Treasury as now required by law." [1844, ch. 103, sec. 1.]

"*And be it enacted*, That the said Baltimore and Ohio Railroad Company be and they are hereby authorized to transport passengers on the said Washington road, to and from the respective cities of Washington and Baltimore, for a less sum than is now authorized, *in cases where such passengers shall perform the trip to and from the two cities within the period of three days*; provided always, that one-fifth part of all such passage money, so received, be accounted for and paid into the State Treasury as afore-said." [1844, ch. 103, sec. 2.]

"*And be it enacted*, That the said Baltimore and Ohio Railroad Company shall also be authorized and required to transport way passengers upon the Washington Branch, in proportion to the charge from city to city, with the same proviso, and subject to the same condition as is expressed in the first and second sections of this Act, with regard to passengers from city to city." [1844, ch. 103, sec 3.]

It was not until the year 1852, that the Company was given the right to reduce its fare to any price which, in its judgment, would best subserve the interest, both of the Company and of the traveling public.

"*Be it enacted by the General Assembly of Maryland*, That the Baltimore and Ohio Railroad Company shall be authorized to regulate the tolls to be paid for the transportation of passengers on the Washington Branch of the said road, in their discretion, not exceeding the maximum heretofore fixed by law; provided, that one-fifth of the passage money received from the said branch road be accounted for and paid into the State Treasury, as now required by law." [1852, ch. 328.]

The rates of fare charged by the Company have been determined by its own discretion since the year 1852; but it must be remembered that it has always been obliged to charge each passenger more than the sum which would reimburse the Company for the service rendered;

because it has been constrained by the Acts, already cited, to pay into the Treasury of the State one-fifth part of the money received from passengers on said road; and as a matter of course that charge is paid by the passenger. Every tax falls at last upon the consumer.

The State of Maryland, in order to pay for the interest which it now holds in the Washington Branch road, issued to this Company \$500,000, in a stock paying  $4\frac{1}{2}$  per cent. interest. It did not increase its responsibility really by changing its rate of interest on these bonds to 5 per cent.; because it was protected by the agreement made under the Act of 1833, ch. 33. Since 1833, when the Act of 1832, ch. 175, went into effect, and up to the close of the fiscal year of the State, ending September 30th, 1863, the account of the investment of the State in the Washington Branch road stood, it is believed, approximately as follows:

Amount of 5 per ct. debt actually contracted, under Act of 1833, ch. 33, for Washing- ton Branch of Baltimore and Ohio R. R., as shown by Statement J, of Comptroller's report for fiscal year ending Sept. 30, 1864,	\$489,329 12
Interest, say from Sept. 30, 1833, to Sept. 30, 1863—30 years, at 5 per cent., - - - -	733,993 68
	<hr/>
Total amount of expenditure on account of investment in Washington Branch, - -	<u>\$1,223,322 80</u>

On the other hand, on Sept. 30, 1863, the State owned its original stock in Wash- ington Branch, at par, - - - - -	\$500,000 00
It had received 10 per ct. on this amount in stock, at par, in lieu of dividends, in 1838,	50,000 00
	<hr/>
	\$550,000 00
It had received in dividends to Sept. 30, '63,	965,250 00
From the one-fifth of the receipts of passen- gers to Sept. 30, 1863, - - - - -	1,765,650 06
	<hr/>
	<u>\$3,280,900 06</u>



So that the State, reckoning its stock at par, had made upon the investment, up to Sept. 30, 1863, \$2,057,577 26.

The whole of this 5 per cent. debt, created for the purpose of paying the State subscription under the Acts of 1832, ch. 175, 1833, ch. 33, was cancelled and redeemed between Sept. 30, 1863, and Sept. 30, 1864. [See Comptroller's Report, 1864.]

The State has since received, from Sept 30, '63,

to Oct. 16, 1869, inclusive, in dividends, \$357,500 00  
 From the one-fifth of the receipts from passengers, being the passenger tax, - - 1,250,327 77

---

\$1,607,827,77

---

Therefore, the State has made, upon its whole investment in the Washington Branch Road, up to October 16th, 1869, a nett profit of \$3,665,405 03, viz :

Par value of stock, - - - - -	\$550,000 00
Received from dividends, - - - - -	965,250 00
“ “ ditto - - - - -	357,500 00
“ “ one-fifth tax, - - - - -	1,765,650 06
“ “ ditto - - - - -	1,250,327 77
	<hr/>
	\$4,888,727 83
Less bonds and interest, - - - - -	1,223,322 80
	<hr/>
	\$3,665,405 03
	<hr/>

It will be seen from this statement that the investment made by the State in the separate stock created for the purpose of constructing the Washington Branch Road, has been very profitable in itself, and that, in point of fact, there was never any real necessity for resort to the capitulation tax, as a mode of indemnifying itself against loss.

To this tax—for it is as clearly a tax as any impost laid now upon income by the United States—this Company was not compelled to make objection, so long as the State authorized no other railway to be built between Baltimore and Washington, nor could it reasonably object to the

authorization of any other railway between these points, if the State deemed such a road to be necessary, and imposed the same charge upon the gross passenger receipts of the new road. But it so happens that the State has not imposed this tax upon passengers over a competing line now in course of construction, and it probably will not undertake to impose it upon any road which it may hereafter authorize to be constructed between Baltimore and Washington.

It is not, moreover, probable that the Congress of the United States will impose such a tax upon travel over any road built to or from Washington, under such charter as it may grant, because this very tax upon passenger travel, imposed by the State of Maryland, has been declared to be an evil justifying the creation of railroad corporations by the authority of Congress.

This tax, therefore, remains, and will remain, a charge upon the Washington Branch of the Baltimore and Ohio Railroad only. It will give to every competing Company, whether authorized by this State, or by the United States, a margin of twenty per cent. in the gross receipts within which it may reduce its fare, without loss to itself, whenever it enters upon active competition with the Washington Branch Road; and it gives to every such company a *bounty* of twenty per cent., if the prices of travel are maintained by any such compromise, as is often resorted to by competing lines. It will make this Company the object of injurious competition, or else of odium and hostility.

The Baltimore and Ohio Railroad Company is, in interest and ownership, essentially a Maryland corporation. No Internal Improvement Company of equal magnitude in this country is owned as exclusively by citizens of the State by which it was incorporated. It has contributed in no small degree to the prosperity of the State, and has been, unquestionably, the largest and most active cause of the growth and prosperity of the City of Baltimore. It is identified with every interest of that city. It has, therefore, the right to speak and be heard whenever it presents

a plain case to the public consideration. And certainly, therefore, it may ask from the State the formal abandonment of all claim to that tax upon the gross receipts from passengers over the Washington Branch, which has hitherto excited hostility against the Company, when that tax has ceased to be necessary to protect the State against loss, because of its subscription to the stock dedicated to the construction of the Washington Branch.

The Company, moreover, has not the *right* to continue to pay this tax. The Supreme Court, in the case of *Crandall vs. State of Nevada*, 6th Wallace Supreme Court Reports, p. 36, has, as this Committee has been advised, determined principles of Constitutional law, which are in express opposition to the power of the State to derive revenue from such a source. This Company, therefore, has not the legal power to apply any portion of its receipts from passengers traveling upon the Washington Branch to the payment of this tax; nor can the sum, of which the Governor requests payment, be considered to be, in any sense, the "money of the State."

It may be unwise to reduce the fare upon the Washington Branch Road, while the State continues to make this claim to receive one-fifth of the whole amount of the money paid by passengers traveling upon that road; but this Committee recommends that the rate of fare of all such passengers be reduced one-fifth whenever the State shall formerly abandon this claim. This Company has no purpose or desire to appropriate to its own uses the proceeds of the tax levied by the State upon travel over the Washington Branch Road.

In closing its report, the Committee of Finance desires to say, that the immunity of the stock of the Baltimore and Ohio Railroad Company from taxation, has been alluded to as if this Company had been the object of the peculiar bounty of the State.

This Committee has already shown the reason which existed for the grant of this privilege. The advantage was not conceded to this Company only. The Stock of the Chesapeake and Ohio Canal Company was exempted from

taxation in the same complete manner by the Act of 1823, chapter 140, sec. 9; and the Stock of the Baltimore and Susquehanna Railroad Company was exempted from taxation in a manner equally complete, by the Act of 1827, chapter 72, section 20. Nor did the State confer this benefit on the last named company only. In 1854, the Baltimore and Susquehanna Railroad Company was indebted to the State to an amount exceeding \$3,000,000. Yet the State, when it agreed that the Baltimore and Susquehanna Railroad Company should be consolidated with the three Pennsylvania Companies known as the York and Maryland Line Railroad Company, the York and Cumberland Railroad Company, and the Susquehanna Railroad Company, under the name of the Northern Central Railway Company, did, by the express terms of the Act of Consolidation, [1854, chapter 250,] agree that the Consolidated Company should possess all the powers and privileges before enjoyed by the Baltimore and Susquehanna Railroad Company. By the Act of 1854, chapter 260, the State agreed to relinquish its claims against the Baltimore and Susquehanna Railroad Company for an annuity of \$90,000 a year. The effect of this arrangement was, that the capital stock of three Pennsylvania Railroads consolidated with the Baltimore and Susquehanna Railroad, in creating the Northern Central Railway Company, was exempted from taxation by this State at the same time that the State abandoned a claim to \$1,500,000 of indebtedness. The Northern Central Railway Company was left as free from taxation as the Baltimore and Ohio Railroad Company, and was at full liberty, in so far as its charter permitted, to employ its resources in aiding the construction of branch lines unembarrassed by any capitation tax whatever.

This Committee has no disposition, and no right, to take exception to any arrangement of the affairs of other Companies which the State has seen fit to sanction or authorize. But if it should happen that any reproach is cast upon this Company hereafter for its refusal to pay a tax declared to be illegal by the Supreme Court of the

United States, it will be enough to remember, in its vindication, that it did not avail itself of its legal rights, even for its own protection, until it became apparent that, if it did not maintain them, it would not enjoy, in this State, although it was essentially in interest a Maryland corporation, privileges equal to those enjoyed by a corporation essentially Pennsylvanian in policy and ownership.

JOHNS HOPKINS,

*Chairman of Finance Committee  
Baltimore and Ohio Railroad Company.*











UNIVERSITY OF ILLINOIS-URBANA



3 0112 002430699